

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

U.S. BANCORP,

| Case No. 22CV38719

Plaintiff,

SUMMONS

1

EMCOR FACILITIES SERVICES, INC. and
CONTINENTAL CASUALTY COMPANY
dba CNA INSURANCE COMPANIES.

Defendants.

TO: Continental Casualty Company dba CNA Insurance Companies
c/o CT Corporation
780 Commercial St. SE, Ste. 100
Salem, OR 97301

IN THE NAME OF THE STATE OF OREGON: You are hereby required to appear and defend the complaint filed against you in the above civil action within thirty (30) days from the date of service of this Summons upon you, and you are notified in case of failure to do so, the plaintiff will apply to the Court for the relief demanded in the Complaint.

NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY!

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the Court a legal paper called a "motion" or "answer." The " motion" or "answer" must be given to the Court clerk or administrator within thirty (30) days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service upon the plaintiff. If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll free in Oregon at (800) 452-7636.

111

111

111

1 DATED: November 16, 2022 SBH LEGAL
2

3 /s/ Rebecca A. Watkins
4 Rebecca A. Watkins, OSB No. 044445
5 Email: rwatkins@sbhlegal.com
6 1200 SW Main Street
7 Portland, OR 97205
8 Tel: (503) 225-5858
9 Fax: (503) 721-9272

10 Attorney of record for Plaintiff
11

12 STATE OF OREGON)

13 ss)
14 County of Multnomah)

15 I, the undersigned attorney of record for Plaintiff, certify that the foregoing is an exact
16 and complete copy of the original Summons in the above-entitled action.

17 SBH LEGAL
18

19 /s/ Rebecca A. Watkins
20 Rebecca A. Watkins, OSB No. 044445
21 Email: rwatkins@sbhlegal.com
22 1200 SW Main Street
23 Portland, OR 97205
24 Tel: (503) 225-5858
Fax: (503) 721-9272

Attorney of record for Plaintiff

TO THE OFFICER OR OTHER PERSON SERVICE THIS SUMMONS: You are
hereby directed to serve a true copy of this summons, together with a true copy of the complaint
mentioned therein, upon the individual(s) or other legal entity(ies) to whom or which this
summons is directed, and to make your proof of service on the reverse hereof or upon a separate
similar document which you shall attach hereto.

/s/ Rebecca A. Watkins
Rebecca A. Watkins, OSB No. 044445
Attorney of record for Plaintiff

11/11/2022 1:57 PM
22CV38719

1

2

3

4 IN THE CIRCUIT COURT OF THE STATE OF OREGON

5 FOR THE COUNTY OF MULTNOMAH

6 U.S. BANCORP,	Case No.
7 Plaintiff,	COMPLAINT FOR DECLARATORY
8 vs.	JUDGMENT AND INJUNCTIVE RELIEF
9 EMCOR FACILITIES SERVICES, INC. dba ,	(Claim not subject to mandatory
10 and CONTINENTAL CASUALTY	arbitration)
11 COMPANY dba CNA INSURANCE	Fee Authority: ORS 21.135
12 COMPANIES,	Jury Trial Demanded
13 Defendants.	
14	
15	

16 Plaintiff U.S. Bancorp alleges as follows:

17 1.

18 Plaintiff brings this complaint to enforce the contract between the parties and seeks
19 relief in the form of a declaration that defendants have a contractual duty to defend and
20 indemnify U.S. Bancorp in *Laprelle Curtis v. US Bancorp et al*, Multnomah County Case No.
21 22CV15950 (hereinafter, "the Lawsuit").

22 2.

23 This court has jurisdiction to declare the rights and status of the parties pursuant to ORS
24 28.010 and ORS 20.030. Venue is appropriate in Multnomah County because the Lawsuit was

1 filed in Multnomah County and alleges negligent services by EMCOR performed on behalf of
2 plaintiff in Multnomah County.

3. 3.

4 U.S. Bancorp is a foreign business corporation with a principal place of business in

5 Minneapolis, Minnesota that is authorized to and does conduct regularly-sustained-business-in-
6 Multnomah County, Oregon including operating a bank branch at 305 NE 181st Avenue in
7 Multnomah County.

8. 4.

9 Emcor Facility Services, Inc. (hereinafter, "EMCOR") is a foreign business corporation
10 with a principal place of business in Cincinnati, Ohio that is authorized to and does conduct
11 regularly sustained business in Multnomah County, Oregon.

12. 5.

13 At all times relevant, Continental Casualty Company dba CNA Insurance Companies
14 (hereinafter, "CNA") was a foreign corporation registered and authorized to conduct business
15 in the State of Oregon and maintained offices in Multnomah County. During the relevant time
16 period, CNA provided general liability insurance for EMCOR under policy number GL
17 6081316313.

18. 6.

19 At all times relevant, a Master Service Agreement existed between US Bancorp and
20 EMCOR whereby EMCOR provided services at US Bank locations including a bank branch at
21 305 NE 181st Avenue.

22. 7.

23 Under the Master Service Agreement, the statement of work provided by EMCOR
24 included services for "plumbing systems" including "relief valves and backflow preventers."

1 8.

2 Under Section 11 of the Master Service Agreement, EMCOR agreed:

3 Supplier will defend, indemnify and hold harmless U.S. Bank and its Affiliates.
4 and the employees, officers, and directors of U.S. Bank and its Affiliates (each an
5 "Indemnified Party") against all costs and expenses of the Indemnified Party
6 (including reasonable attorneys' fees) arising in connection with a third party
7 claim or demand against the indemnified Party and all direct damages of the
8 Indemnified Party arising from or in connection with (1) the negligent acts,
9 omissions, or willful misconduct of Supplier or Supplier's Personnel, (2) the
10 breach by Supplier or Supplier's Personnel of any obligations or warranties under
11 this Agreement, (3) Supplier's or Supplier's Personnel's violation of any
12 applicable law, statute or regulation, (4) Supplier's or Supplier's Personnel's
violation of any third party's trade secrets, proprietary information, trademark,
copyright, or patent rights in connection with the performance of this Agreement,
or (5) any death, bodily injury or property damage caused or incurred by Supplier
or Supplier's Personnel. Supplier may, at its option, conduct the defense in any
third party action arising under this Section and U.S. Bank promises to cooperate
with such defense, provided Supplier reasonably consults with U.S. Bank on any
settlement. Notwithstanding the foregoing, U.S. Bank may, at its own expense,
assist in such defense if it so chooses, provided that Supplier will control such
defense and all negotiations relative to the settlement of any such claim.

13 9.

14 On or about May 13, 2022, Laprell Curtis filed the Lawsuit against plaintiff in
15 Multnomah County Circuit Court for injuries alleged to have occurred when falling into an
16 open underground vault for a backflow prevention device. The Lawsuit is ongoing. A true copy
17 of the Complaint is attached as Exhibit 1.

18 10.

19 On or about June 3, 2022, plaintiff tendered the Lawsuit to EMCOR and CNA for
20 defense.

21 11.

22 EMCOR refused to accept tender. On or around August 2, 2022, CNA also refused to
23 defend plaintiff. As a result, plaintiff has and will continue to incur defense costs in the
24 Lawsuit, anticipated to be over \$100,000.

CLAIM FOR RELIEF

(Declaratory Relief)

12.

4 Plaintiff re-alleges the facts set forth in the previous paragraphs and incorporates them
5 herein by reference.

13.

7 The Master Service Agreement requires EMCOR to defend plaintiff for claims by third
8 parties arising out of negligent acts or omissions by EMCOR's personnel, which encompasses
9 any subcontractors utilized by EMCOR. The Master Service Agreement further requires
10 EMCOR to defend plaintiff against claims by third parties based on violation of applicable law,
11 statute or regulation.

14.

13 The Lawsuit alleges claims against plaintiff that include one or more covered acts of
14 negligence, misconduct or violations of regulations by EMCOR and/or its personnel. As such,
15 the Lawsuit gives rise to EMCOR's duty to defend, indemnify and hold plaintiff harmless in
16 the Lawsuit.

15.

18 Plaintiff is entitled to a declaration that EMCOR and CNA have a duty to defend
19 plaintiff in the Lawsuit. Declaratory relief would have a practical effect on plaintiff's rights
20 because it would cause defendants to provide the defense owed under the contract.

16.

22 Plaintiff seeks specific performance of the duty to defend, with equitable compensation
23 for attorney fees and defense expenditures incurred to date.

24 | //

17.

Under Section 14D of the Master Service Agreement, in any dispute regarding the
agreement, the prevailing party can recover attorney fees and costs. Plaintiff seeks an award of
its reasonable attorney fees and costs incurred in this action as outlined in the Master Service
Agreement.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully requests the following relief:

1. A declaration that EMCOR and CNA have a duty to defend plaintiff in the Lawsuit and
must reimburse plaintiff for all costs of defense incurred to date in the Lawsuit;
2. For specific performance of the duty to defend;
3. A finding that plaintiff is the prevailing party;
4. An award in favor of plaintiff of reasonable attorney fees, costs, disbursements and
expenses incurred in bringing this action; and
5. Any other relief that the court deems just and equitable.

DATED: November 11, 2022

SBH LEGAL



18
19
20
21
22
23
24
Rebecca A. Watkins, OSB No. 044445
Email: rwatkins@sbhlegal.com
Tel.: (503) 225-5858
Fax: (503) 721-9272

Of Attorneys for Plaintiff

5/13/2022 3:52 PM
22CV15950

1

2

3

6

7 LAPRELLE CURTIS,

8 Plaintiff,

9

0 U.S. BANCORP, NMJ PACIFIC, LLC, and
EMCOR FACILITIES SERVICES, INC.,

Defendants.

-) Case No.:
-)
-) COMPLAINT AND DEMAND FOR JURY
-) TRIAL
-)
-) (Negligence/Negligence *Per Se*)
-)
-) (NOT Subject to Mandatory Arbitration)
-)
-) Total prayer: \$460,550
-) Filing fee \$594 per ORS 21.160(1)(c)

3

4 For his complaint against Defendant U.S. BANCORP ("Defendant US Bank"),
5 Defendant NMJ PACIFIC, LLC ("Defendant NMJ"), and Defendant EMCOR FACILITIES.
6 SERVICES, INC. ("Defendant EMCOR"), Plaintiff LAPRELLE CURTIS ("Plaintiff") alleges

1

8 At all material times, Defendant US Bank is a duly organized foreign business
9 corporation with a principal place of business in Minneapolis, Minnesota, authorized to do
0 business and conducting regularly sustained business in Multnomah County, Oregon.

2

2 At all material times, Defendant NMJ is a duly organized domestic limited liability
3 company with a principal place of business in Beaverton, Oregon, authorized to do business and
4 conducting regularly sustained business in Multnomah County, Oregon.

11

6

Page - 1 COMPLAINT AND DEMAND FOR JURY TRIAL

Levin and Levine, LLP
516 SE Morrison, Suite 650
Portland, OR 97214
Tel: (503) 946-8708
Fax: (503) 719-6979
scott@levinandlevine.com

EXHIBIT I

Notice of Removal - Exhibit A

1 3.
2 At all material times, Defendant EMCOR is a duly organized foreign business
3 corporation with a principal place of business in Cincinnati, Ohio, authorized to do business and
4—conducting regularly sustained business in Multnomah County, Oregon.

5 4.
6 The incident that is the subject of this action occurred in Multnomah County, Oregon.

8 At all material times, Defendant NMJ owned the property located at 305 NE 181st
9 Avenue, Gresham, Oregon 97230 ("the Premises").

10 6.
11 At all material times, Defendant US Bank occupied the Premises and did business by
12 operating a U.S. Bank branch on the Premises.

13 7.
14 At all material times, as owners and operators of the Premises, Defendant NMJ and
15 Defendant US Bank were responsible for maintaining and repairing the sidewalks, backflow
16 prevention devices, and underground vaults abutting or immediately adjacent to the Premises.

17 8.
18 At all material times, Defendant EMCOR was contracted by Defendant US Bank to
19 manage, maintain, and/or repair the Premises, including a backflow prevention device and
20 underground vault located under the sidewalk on the east side of the building. On information
21 and belief, Defendant EMCOR was an agent or apparent agent of Defendant US Bank.
22 Therefore, Defendant US Bank is vicariously liable for Defendant EMCOR's negligence.

24 On information and belief, Defendant EMCOR was authorized by Defendant US Bank to
25 subcontract its services to other vendors.
26

1 10.

2 On information and belief, all subcontractors hired by Defendant EMCOR to perform
3 services at the Premises were agents or apparent agents of Defendant EMCOR. Therefore,
4 Defendant EMCOR is vicariously liable for its subcontractors' negligence.

5 11.

6 At all material times, Plaintiff was a "person with a disability" as defined by ORS
7 174.107 due to visual impairments Plaintiff suffered as a result of sarcoidosis.

8 12.

9 At all material times, Plaintiff was a business invitee of Defendant US Bank.

10 13.

11 On or about April 2, 2021, at approximately 6:45 a.m., Plaintiff was walking northbound
12 on the west sidewalk of NE 181st Avenue near the intersection of NE Everett Street. Plaintiff
13 intended to use Defendant US Bank's ATM on the Premises. Unbeknownst to Plaintiff, the
14 underground vault for the backflow prevention device at the Premises had been left open
15 overnight, leaving a gaping hole in the sidewalk bordering the east side of the Premises. On
16 information and belief, the hole in the sidewalk was approximately eight feet deep. As Plaintiff
17 walked, he fell into the hole and was injured as set forth below.

18 ///

19 ///

20 ///

21

22

23

24

25

26

Page - 3 COMPLAINT AND DEMAND FOR JURY
TRIAL

Levin and Levine, LLP
516 SE Morrison, Suite 650
Portland, OR 97214
Tel: (503) 946-8708
Fax: (503) 719-6979
scott@levinandlevine.com

1 14.

2 The following photograph shows the condition of the sidewalk and underground vault on
3 April 2, 2021:



16 15.

17 As a result of Defendants' negligence/negligence *per se*, Plaintiff fell into a hole in the
18 sidewalk at the Premises and sustained a laceration to his right leg that required 18 stitches,
19 permanent scarring and nerve damage to his right leg, post-traumatic stress disorder, headaches,
20 and injuries to his chest, ribs, right leg, and back. All of these injuries are either new injuries or
21 aggravations of previously existing conditions. These injuries have caused and will continue to
22 cause Plaintiff pain and suffering and impairment to his normal and usual activities, all to his
23 non-economic damages in an amount up to \$450,000. Plaintiff reserves the right to amend this
24 paragraph at the time of trial.
25

26

Page - 4 COMPLAINT AND DEMAND FOR JURY
TRIAL

Levin and Levine, LLP
516 SE Morrison, Suite 650
Portland, OR 97214
Tel: (503) 946-8708
Fax: (503) 719-6979
scott@levinandlevine.com

16.

2 As a further result of Defendants' negligence/negligence *per se*, Plaintiff had to undergo
3 medical treatment for his injuries. As a result of such treatment, he incurred expenses for past
4 medical treatment in the approximate amount of \$10,550, the exact amount to be proven at trial.
5 Plaintiff reserves the right to amend this paragraph at the time of trial.

6 17.

7 Plaintiff intends to amend the Complaint at a future date, and with the Court's
8 permission, to add claims for punitive damages under ORS 31.725 against Defendants, and each
9 of them.

10 **FIRST CLAIM FOR RELIEF**

11 **(Negligence/Negligence *Per Se* – Defendant US Bank)**

12 18.

13 Plaintiff re-alleges all paragraphs above.

14 19.

15 The incident in question, and Plaintiff's resulting personal injuries, were caused or
16 contributed to by the negligence/negligence *per se* of Defendant US Bank in one or more of the
17 following particulars:

18 1. In causing the underground vault to be left open overnight, which created the
19 unsafe condition in the sidewalk;

20 2. In failing to keep the condition of the sidewalk adequately safe and in good repair;

21 3. In failing to adequately warn of the condition of the sidewalk;

22 4. In failing to place physical barriers or barricades to prevent pedestrians from
23 falling into the hole in the sidewalk;

24 5. In failing to adequately inspect the condition of the sidewalk;

25 6. In failing to provide an alternate path for pedestrians using the sidewalk while
26 work was being performed;

- 1 7. In hiring incompetent, unqualified, and unskilled employees and/or contractors to
- 2 perform work on the backflow prevention device and underground vault;
- 3 8. In failing to properly train and/or instruct employees and/or contractors to warn of
- 4 hazards and to not leave underground vaults open overnight;
- 5 9. In failing to adequately supervise and monitor employees and/or contractors
- 6 performing work on backflow prevention devices and underground vaults;
- 7 10. In failing to establish an adequate safety program to prevent underground vaults
- 8 from being left open overnight;
- 9 11. In failing to establish adequate policies and/or adequately enforce policies for
- 0 employees and/or contractors performing work on backflow prevention devices
- 1 and underground vaults, including policies for warning of hazards and not leaving
- 2 underground vaults open overnight; and,
- 3 12. In failing to keep the sidewalk free of cracks, holes, and unevenness that impedes
- 4 or creates a hazard for users in violation of Gresham Revised Code 7.15.040(5),
- 5 which is intended to protect pedestrians such as Plaintiff from the kind of harm
- 6 that happened to him.

18 Plaintiff was within the class of persons foreseeably put at unreasonable risk by
19 Defendant US Bank's described acts and omissions. Defendant US Bank knew or should have
20 known that each of the acts or omissions described below foreseeably would put others on or
21 near public rights of way at risk, that such acts or omissions would predictably lead to repeated
22 incidents of serious injury, and that such injuries were preventable in the exercise of reasonable
23 care:

24 1. If the underground vault was left open overnight, creating an unsafe condition in
25 the sidewalk;
26 2. If the condition of the sidewalk was not kept adequately safe and in good repair;

3. If adequate warnings were not given about the condition of the sidewalk;
4. If physical barriers or barricades were not placed to prevent pedestrians from falling into the hole in the sidewalk;
5. If the condition of the sidewalk was not adequately inspected;
6. If an alternate path was not provided for pedestrians using the sidewalk while work was being performed;
7. If incompetent, unqualified, and unskilled employees and/or contractors were hired to perform work on backflow prevention devices and underground vaults;
8. If employees and/or contractors were not properly trained and/or instructed to warn of hazards and to not leave underground vaults open overnight;
9. If employees and/or contractors performing work on backflow prevention devices and underground vaults were not adequately supervised and monitored;
10. If an adequate safety program to prevent underground vaults from being left open overnight was not established;
11. If adequate policies for employees and/or contractors performing work on backflow prevention devices and underground vaults were not established and/or enforced, including policies for warning of hazards and not leaving underground vaults open overnight; and,
12. If sidewalks were not kept free of cracks, holes, and unevenness that impedes or creates hazards for users in violation of Gresham Revised Code 7.15.040(5), which is intended to protect pedestrians such as Plaintiff from the kind of harm that happened to him.

SECOND CLAIM FOR RELIEF

(Negligence/Negligence *Per Se* – Defendant NMJ)

21.

26 Plaintiff re-alleges all paragraphs above.

Page - 7 COMPLAINT AND DEMAND FOR JURY TRIAL

Levin and Levine, LLP
516 SE Morrison, Suite 650
Portland, OR 97214
Tel: (503) 946-8708
Fax: (503) 719-6979
scott@levinandlevine.com

1 22.

2 The incident in question, and Plaintiff's resulting personal injuries, were caused or
3 contributed to by the negligence/negligence *per se* of Defendant NMJ in one or more of the
4 following particulars:

5 1. In causing the underground vault to be left open overnight, which created the
6 unsafe condition in the sidewalk;

7 2. In failing to keep the condition of the sidewalk adequately safe and in good repair;

8 3. In failing to adequately warn of the condition of the sidewalk;

9 4. In failing to place physical barriers or barricades to prevent pedestrians from
10 falling into the hole in the sidewalk;

11 5. In failing to adequately inspect the condition of the sidewalk;

12 6. In failing to provide an alternate path for pedestrians using the sidewalk while
13 work was being performed;

14 7. In hiring incompetent, unqualified, and unskilled employees and/or contractors to
15 perform work on the backflow prevention device and underground vault;

16 8. In failing to properly train and/or instruct employees and/or contractors to warn of
17 hazards and to not leave underground vaults open overnight;

18 9. In failing to adequately supervise and monitor employees and/or contractors
19 performing work on backflow prevention devices and underground vaults;

20 10. In failing to establish an adequate safety program to prevent underground vaults
21 from being left open overnight;

22 11. In failing to establish adequate policies and/or adequately enforce policies for
23 employees and/or contractors performing work on backflow prevention devices
24 and underground vaults, including policies for warning of hazards and not leaving
25 underground vaults open overnight; and,

26

Page - 8 COMPLAINT AND DEMAND FOR JURY
TRIAL

Levin and Levine, LLP
516 SE Morrison, Suite 650
Portland, OR 97214
Tel: (503) 946-8708
Fax: (503) 719-6979
scott@levinandlevine.com

1 12. In failing to keep the sidewalk free of cracks, holes, and unevenness that impedes
2 or creates a hazard for users in violation of Gresham Revised Code 7.15.040(5),
3 which is intended to protect pedestrians such as Plaintiff from the kind of harm
4 that happened to him.

23, 5

6 Plaintiff was within the class of persons foreseeably put at unreasonable risk by
7 Defendant NMJ's described acts and omissions. Defendant NMJ knew or should have known
8 that each of the acts or omissions described below foreseeably would put others on or near public
9 rights of way at risk, that such acts or omissions would predictably lead to repeated incidents of
10 serious injury, and that such injuries were preventable in the exercise of reasonable care:

1. If the underground vault was left open overnight, creating an unsafe condition in
2 the sidewalk;
3. If the condition of the sidewalk was not kept adequately safe and in good repair;
4. If adequate warnings were not given about the condition of the sidewalk;
5. If physical barriers or barricades were not placed to prevent pedestrians from
6 falling into the hole in the sidewalk;
7. If the condition of the sidewalk was not adequately inspected;
8. If an alternate path was not provided for pedestrians using the sidewalk while
9 work was being performed;
10. If incompetent, unqualified, and unskilled employees and/or contractors were
11 hired to perform work on backflow prevention devices and underground vaults;
12. If employees and/or contractors were not properly trained and/or instructed to
13 warn of hazards and to not leave underground vaults open overnight;
14. If employees and/or contractors performing work on backflow prevention devices
15 and underground vaults were not adequately supervised and monitored;

Page - 9 COMPLAINT AND DEMAND FOR JURY TRIAL.

Levin and Levine, LLP
516 SE Morrison, Suite 650
Portland, OR 97214
Tel: (503) 946-8708
Fax: (503) 719-6979
scott@levinandlevine.com

THIRD CLAIM FOR RELIEF

(Negligence/Negligence *Per Se* – Defendant EMCOR)

14 Plaintiff re-alleges all paragraphs above.

16 The incident in question, and Plaintiff's resulting personal injuries, were caused or
17 contributed to by the negligence/negligence *per se* of Defendant EMCOR in one or more of the
18 following particulars:

26

20 Plaintiff was within the class of persons foreseeably put at unreasonable risk by
21 Defendant EMCOR's described acts and omissions. Defendant EMCOR knew or should have
22 known that each of the acts or omissions described below foreseeably would put others on or
23 near public rights of way at risk, that such acts or omissions would predictably lead to repeated
24 incidents of serious injury, and that such injuries were preventable in the exercise of reasonable
25 care:

1. If the underground vault was left open overnight, creating an unsafe condition in
2 the sidewalk;
3. If the condition of the sidewalk was not kept adequately safe and in good repair;
4. If adequate warnings were not given about the condition of the sidewalk;
5. If physical barriers or barricades were not placed to prevent pedestrians from
6 falling into the hole in the sidewalk;
7. If the condition of the sidewalk was not adequately inspected;
8. If an alternate path was not provided for pedestrians using the sidewalk while
9 work was being performed;
10. If incompetent, unqualified, and unskilled employees and/or subcontractors were
11 hired to perform work on backflow prevention devices and underground vaults;
12. If employees and/or subcontractors were not properly trained and/or instructed to
13 warn of hazards and to not leave underground vaults open overnight;
14. If employees and/or subcontractors performing work on backflow prevention
15 devices and underground vaults were not adequately supervised and monitored;
16. If an adequate safety program to prevent underground vaults from being left open
17 overnight was not established;
18. If adequate policies for employees and/or subcontractors performing work on
19 backflow prevention devices and underground vaults were not established and/or
20 enforced, including policies for warning of hazards and not leaving underground
21 vaults open overnight; and,
22. If sidewalks were not kept free of cracks, holes, and unevenness that impedes or
23 creates hazards for users in violation of Gresham Revised Code 7.15.040(5),
24 which is intended to protect pedestrians such as Plaintiff from the kind of harm
25 that happened to him.

Page - 12 COMPLAINT AND DEMAND FOR JURY
TRIAL

Levin and Levine, LLP
516 SE Morrison, Suite 650
Portland, OR 97214
Tel: (503) 946-8708
Fax: (503) 719-6979
scott@levinandlevine.com

1

PRAYER

2

WHEREFORE, Plaintiff prays for a judgment against Defendants, and each of them:

3

- (1) In an amount up to \$450,000 for his non-economic damages;
- (2) In the amount of \$10,550 for his economic damages; and,
- (3) For his costs and disbursements herein.

6

Dated this 13th day of May, 2022.

7

Levin and Levine, LLP

8

/s/ Scott Levin

9

Scott Levin, OSB No. 077088
Of Attorneys for Plaintiff

10

**PLAINTIFF HEREBY DEMANDS
A TRIAL BY JURY**

11

/s/ Scott Levin
Scott Levin

13

14

15

16

17

18

19

20

21

22

23

24

25

26

Page - 13 COMPLAINT AND DEMAND FOR JURY
TRIAL

Levin and Levine, LLP
516 SE Morrison, Suite 650
Portland, OR 97214
Tel: (503) 946-8708
Fax: (503) 719-6979
scott@levinandlevine.com